

ACUPUNCTURE BOARD

FINAL STATEMENT OF REASONS

HEARING DATE: July 14, 2003

Sections Affected: 1399.415, 1399.416, 1399.434, 1399.435 and 1399.436

UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is included in the file. The Board proposes to amend California Code of Regulation Sections 1399.415, 1399.416 and 1399.436 and add Sections 1399.434 and 1399.435 to comply with the requirements of Business and Professions Code Section 4939 (Chapter 781, Statutes of 2002), requiring all students entering an acupuncture and Oriental medicine training program on or after January 1, 2005 to complete a minimum of 3,000 hours of study.

The Board established a Competencies Task Force, which met over a six-month period from July 2001 to April 2002. They were charged with identifying and developing a list of curriculum subject matter and designating the hourly breakdown associated with each. The Task Force's disparate members represented the acupuncture schools and the practitioners who have been fighting during recent years about educational requirements. At the conclusion of six months they finally came together in a collaborative spirit to outline a list of curriculum subject matter that addresses competencies from seven didactic areas in addition to clinical practice requiring 3,000 hours (2,050 theoretical hours and 950 clinical hours) of education at an approved acupuncture school for an entry-level practitioner in California. The proposed amendments were based on the Competencies Task Force recommendations.

The public hearing was held on Monday, July 14, 2003. Only two written comments were submitted to the Board on the Friday preceding the hearing, one from the Council of Colleges of Acupuncture and Oriental Medicine and the other from the California Medical Association. The nature of the oral testimony was confusing when those who testified verbally recommended modifying, merging or revising the various didactic areas without having their recommendations in writing to present to the Board. The Board has dedicated extensive time on preparing this regulatory proposal to ensure that all stakeholders had an opportunity for input into this process. Since the majority of comments were received orally at the public hearing the Board extended the deadline to submit written comments until September 1, 2003. The Board received two additional written comments by the September 1, 2003 deadline, one from the Council of Acupuncture and Oriental Medicine Associations and one from Tom Haines, PhD. Individual comments are addressed under the summary of comments later in the FSR. The Board's Executive Committee reviewed the oral testimony and written comments and formulated a recommendation encompassing a majority of the recommendations

from each. The Executive Committee recommendations were presented to the members at the September 23, 2003, board meeting.

Three proposed sections received no written or oral comments, therefore on September 23, 2003, the Board adopted **SECTIONS 1399.415, 1399.416 and 1399.436** as proposed and no modifications or updated information was made to these proposed regulations.

The Board adopted the Executive Committee's recommended amendments to the original proposed curriculum regulations for **SECTIONS 1399.434 and 1399.435** and authorized the Executive Officer to proceed with a 15-day notice on the proposed modifications, which occurred October 16, 2003 through October 31, 2003. One additional written comment was received on the proposed modifications that was held and presented to the members at their December 9, 2003 Board meeting.

Preceding the December 2003 Board meeting, on November 17, 2003, Governor Schwarzenegger issued **Executive Order S-2-03** requiring all agencies to reassess the legal validity of pending regulations and their economic impact on business in the State of California and suspended all regulatory packages for further review for a period not to exceed 180 days.

The Board discussed the implications of Executive Order S-2-03 and reviewed the comments resubmitted from Tom Haines, Ph.D. on the 15-day proposed modifications at the December 9, 2003 meeting. The Board adopted the recommended amendments submitted by Dr. Haines and authorized the Executive Officer to proceed with a second 15-day notice on the proposed modifications upon conclusion of the Administration's 180-day review of the pending regulations and gave the Executive Officer the authority to complete the final rulemaking file if no comments are received.

On January 26, 2004 the Board filed a request for exemption with the Administration to continue the current curriculum regulations since there was a statutory mandate to meet the deadline of January 1, 2005, the implementation date of the 3,000-hour program. The Board received a denial to continue the regulatory package, as it did not meet the criteria defined in Executive Order S-2-03. However, on March 3, 2004 the Governor's Legal Affairs Office approved the pending regulations so that the Board could continue processing them. Therefore on March 9, 2004 the Board proceeded with the second 15-day notice on the proposed modifications approved by the Board on December 9, 2003. No comments were received on the second 15-day proposed modifications and the Board completed this rulemaking file.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SMALL BUSINESS IMPACT

The Acupuncture Board has determined this proposed regulatory action would have insignificant statewide adverse economic impact directly affecting California business (i.e., acupuncture schools), including the ability of California businesses to compete with businesses in other states. The Board assesses most acupuncture schools are already providing instruction at the 3,000-hour or higher curriculum level proposed by the regulations and no/minor fiscal impact to the schools and students should occur. However, in those instances where schools are not currently at the 3,000-hour instruction level, schools would be required to restructure their curriculum to conform to the requirements of Business and Professions Code Section 4939 that requires all students entering a training program on or after January 1, 2005 to complete a minimum of a 3,000-hour program.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF MAY 30, 2003, THROUGH THE PUBLIC HEARING DATE OF JULY 14, 2003, AND THROUGH THE EXTENSION PERIOD FOR WRITTEN COMMENTS BETWEEN JULY 15, 2003 AND SEPTEMBER 1, 2003.

COMMENT NO. 1: California Medical Association (CMA) (see letter dated July 9, 2003) was concerned:

1. The Board did not have the authority to process the proposed regulations and that they were not necessary. CMA argued that while the Board is authorized to establish standards for approved training programs, adopting regulations at this time mandating broad educational standards and training for acupuncturists are not necessary, authorized or consistent with existing statutory authority.

BOARD RESPONSE: The Board's legal counsel explained that B & P Code Section 4933 authorizes the Board to adopt, amend or repeal regulations as necessary to carry out the purposes and objectives of the Acupuncture Licensure Act

2. CMA also argued that the proposed new training program explicitly aims to prepare an acupuncturist to "assess or diagnose disease," and utilize standard physical examinations, laboratory and imaging studies and international classification of diseases (ICD) diagnostic principles.

BOARD RESPONSE: B & P Code sections 4927 and 4937 clearly states what the scope of practice is for an acupuncturist. An acupuncturist works in a medical environment and they need to have enough knowledge of the different types of modalities used by the Western practitioner to know when to refer a patient and how to talk to a patient in language they will understand when a patient is referred to them. Their education should provide the practitioner with the foundation to work within this environment, but the scope of practice is clear that it does not authorize them to practice Western medicine.

3. Finally, CMA felt the proposed regulations were not necessary and inconsistent in that B & P Code section 4934.1 requires the Little Hoover Commission to make a comprehensive analysis on the scope of practice, education requirements and the approval process for educational training programs for acupuncturists.

BOARD RESPONSE: With respect to the LHC conducting the analysis and recommendations, legal counsel stated that he sees the review by the LHC as a parallel tract with the Board's regulations and the Board needs to proceed with implementing the regulations to comply with the requirements of B & P Code section 4939(b).

COMMENTS REGARDING SECTION 1399.434(b)(2)(L)

COMMENTS NO. 2: Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) (see letter dated 7/9/03 and 7/14/03 Public Testimony, page 5), **Ron Sokolsky, Southern California University of Health Sciences** (see 7/14/03 Public Testimony, page 5), **Penelope Ward, Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM)** (see 7/14/03 Public Testimony, page 5), and **Ron Zaidman, Five Branches Institute** (see 7/14/03 Public Testimony, page 5)

The Board received written comments from the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) and oral testimony from the individuals listed above, with respect to section 1399.434(b)(2)(L). They specifically requested the Board either retains the wording of the existing regulation or adopts a requirement for successful completion of a comparable national clean needle technique (CNT) course/examination. Their concern is the proposed regulation would permit a school to use an "equivalent standard that has been approved by the Board" and omits an option for a student to successfully complete CCAOM's national clean needle technique course. They further commented that absence of any requirement for national CNT certification undermines the high educational standards that are reflected in the regulation and potentially jeopardizes California consumers of AOM services.

BOARD RESPONSE: As previously discussed, schools and students are not prohibited from using CCAOM's Clean Needle Technique Course. The regulation merely removes the monopoly on clean needle technique courses and allows a competitive market if the schools choose to develop their own CNT course. Furthermore, the schools are ultimately responsible for assuring their students are properly trained prior to performing any needling on human beings.

COMMENTS NO. 3: **Ta Fang Chen, President, California Acupuncture Medical Association** (see letter dated August 26, 2003), and **Ted Priebe, National Guild of AOM** (see 7/14/03 Public Testimony, page 5).

The California Acupuncture Medical Association wrote in support of the change to the clean needle technique portion of the curriculum by removing reference to the Council of Colleges of Acupuncture and Oriental Medicine, and Ted Priebe also testified support of the change at the public hearing.

COMMENTS REGARDING SECTION 1399.434

COMMENT NO. 4: Tom Haines, PhD, Pacific College of Oriental Medicine (PCOM) (see 7/14/03 Public Testimony, page 3-4, written dated 8/26/03, and testimony at September Board meeting-9/23/03 Minutes, page 2).

Dr. Haines commented that he didn't have a problem with the content of the curriculum but did have a problem in terms of its organization. Mr. Haines stated that he attempted to apply the language of the curriculum categories to PCOM's school and found that the proposed categories did not mirror PCOM's categories without making modification. Mr. Haines gave specifics of what needed to be moved and where, what language needed to be modified and what hours needed to be adjusted. Mr. Haines further requested that if we could extend the comment period to September 1, he would provide general comments that would not change the emphasis of the document but would surely clean up the academic sense as well as a functional sense. Mr. Haines did subsequently submit suggested language for curriculum changes.

BOARD RESPONSE: The Board felt Mr. Haines comments were general in nature, that it wasn't changing content and only moving categories and hours around. Furthermore, Mr. Haines was a member of the Competencies Task Force, which developed the proposed curriculum regulations. The proposed curriculum regulations were a collective effort by approximately 22 members representing acupuncture schools and practitioners, and developed during 5 eight-hour meetings. Mr. Haines issues were previously addressed, but not adopted, by the Task Force. To accept Mr. Haines recommendations at this point, defeats the purpose and work of the Task Force. However, the Board did take Mr. Haines comments into consideration and extended the comment period to September 1, 2003 to allow time for comments to be submitted into a written, readable format. Mr. Haines did submit proposed language based on his testimony, dated 8/26/03, however, the majority of his recommendations mirrored his oral testimony from the July 2003 public hearing. His written comments did not change content, but only moved categories and hours around, which was previously discussed with the Board at the July hearing. Some of his comments relating to terminology were accepted and resulted in the first 15-day amendment, such as changes to CCR Section 1399.434 (a)(1)(7), (b)(1)(D & E), (b)(2)(G), and (c)(4).

COMMENT NO. 5: Ron Zaidman, Five Branches Institute (see 7/14/03 Public Hearing, page 5).

Mr. Zaidman agreed with the reorganizing comments made by Tom Haines public comments and recommendations at the public hearing.

BOARD RESPONSE: Mr. Zaidman was also a member of the Competencies Task Force that developed the proposed curriculum regulations, therefore the Board took the same position as with Dr. Haines discussed above.

COMMENT NO. 6: Raymond Victorio, Acupuncture Integrative Medicine College in Berkeley (AIMC) (see 7/14/03 Public Testimony, page 5-6).

Mr. Victorio commented that he agreed with the idea of the language in the proposed regulations, but felt it needed to be cleaned up to reflect the overall intent of the curriculum. Mr. Victorio felt the language does not provide for what competencies really are, i.e., skills, knowledge, attributes and values and express performance requirements in behavioral terms.

BOARD RESPONSE: The Board felt Mr. Victorio was also a member of the Competencies Task Force that developed the proposed curriculum regulations, therefore the Board took the same position as with Dr. Haines discussed above.

COMMENT NO. 7: Brian Fennen, Council of Acupuncture and Oriental Medicine Association (CAOMA) (see letter dated 7/14/03, 7/14/03 Public Testimony, page 3, letter dated 8/29/03, and testimony at September Board meeting-9/23/03 Minutes, page 2), **requested specific amendments as follows:**

1. Delete proposed section 1399.434(a)(7), as it is covered in section 1399.434(a)(6)

BOARD RESPONSE: Agreed and recommendation was accepted.

2. Amend 1399.434(b)(1)(C) to include “Tui Na”

BOARD RESPONSE: Agreed and recommendation was accepted.

3. Amend 1399.434(b)(1)(F) to include geriatrics, as it is an extremely important specialty.

BOARD RESPONSE: Agreed and recommendation was accepted.

4. Amend 1399.434(b)(1)(H) to include “Modern”

BOARD RESPONSE: Agreed and recommendation was accepted.

5. Amend 1399.434(b)(2)(C) to include “Tui Na” and “therapy”

BOARD RESPONSE: Agreed and recommendation was accepted.

6. Amend 1399.434(b)(2)(L) to specify that students should learn clean needle technique before performing needling techniques on “persons other than themselves”

BOARD RESPONSE: The Board agreed and the proposed action was modified to state “Students shall successfully complete the clean needle technique portion of the hygienic standards subject prior to performing any needling technique on human beings.”

7. Amend 1399.434(b)(2)(N) to include “cool lasers”.

BOARD RESPONSE: Disagreed that this would be expanding an acupuncturist scope of practice and the recommendation was rejected.

8. Amend 1399.434(c)(3) to state that pharmacological assessment, emphasizing “side effects and herb-drug interaction”.

BOARD RESPONSE: Agreed and recommendation was accepted.

9. Amend 1399.434(f)(1) to specify “disease” prevention.

BOARD RESPONSE: Agreed and recommendation was accepted.

10. Amend 1399.434(h)(1) to include “Oriental medicine” and a “minimum 150 hours”.

BOARD RESPONSE: Agreed and recommendation was accepted.

11. Amend 1399.434(h)(2) to include a “minimum 275 hours” diagnosis and evaluation.

BOARD RESPONSE: Agreed and recommendation was accepted.

12. Amend 1399.434(h)(3) to include “Chinese herbal medicine, and other modalities of Oriental medicine” and a “minimum 275 hours”.

BOARD RESPONSE: Agreed and recommendation was accepted.

13. Amend 1399.435(e) to strike “/or” and add, “license clinical” experience “in the practice of acupuncture and oriental medicine.”

BOARD RESPONSE: Agreed and recommendation was accepted.

COMMENTS RECEIVED DURING THE PERIOD THE FIRST MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC FROM OCTOBER 16, 2003 THROUGH OCTOBER 31, 2003 ON SECTIONS 1399.434 AND 1399.435.

The first modified text was made available to the public from October 16, 2003 through October 31, 2003.

COMMENTS NO. 8: Tom Haines, PhD, Pacific College of Oriental Medicine (PCOM) (see written dated 10/22/03 and testimony at December Board meeting-12/9/03, page 2-3).

Dr. Haines re-submitted his suggestions and modifications from the proposed language that the Board did not adopt in his original comments. Though many of the recommendations were outside the 15-day modified proposed language, Board's legal counsel Don Chang, advised the Board that could disregard his recommendations or amend, accept or reject the modifications at their discretion. The Board chose to review and discuss each of the recommendations submitted by Dr. Haines even though they were outside of the 15-day amended notice. **His requested specific amendments and Board responses is as follows:**

1. He supported the modified proposal to delete section 1399.434(a)(7), as it is covered in section 1399.434(a)(6).
2. He supported the modified proposal to delete section 1399.434(1)(10).
3. He recommended amending section 1399.434(b)(1)(A) to remove 'acupuncture and' as it was duplicated in 1399.434(b)(1)(B).

BOARD RESPONSE: Agreed and recommendation was accepted.

4. He supported the modified proposal to amend section 1399.434(b)(1)(D), adding 'including relevant botany concepts.'
5. He recommended amending section 1399.434(b)(1)(H), as this literature is included in the curriculum of all schools.

BOARD RESPONSE: The Board concurred with Dr. Haines that traditional, classical and historical literature on acupuncture and Oriental medicine is encompassed in the schools, but felt many did not also include more modern or newer literature and materials, which are essential to integration to a Western world medicine, therefore the Board rejected this recommendation.

6. He recommended deleting section 1399.434(b)(2)(G), as it is covered under section 1399.434(c)(11).

BOARD RESPONSE: Agreed and recommendation was accepted.

7. He recommended deleting the portion of section 1399.434(c), that read ‘...to utilize standard physical examinations, laboratory and imaging studies, and international classification of diseases (ICD) diagnostic principles to...’ as this information is contained in other portion of section 1399.434.

BOARD RESPONSE: The Board concurred with Dr. Haines these are contained in other didactic and/or clinical components of the education, however the Board felt it is also appropriate to be included in the paragraph under section 1399.434(c) which defines the expectations and educational outcomes of the knowledge, skills and abilities of a student in clinical practice, therefore the Board rejected this recommendation.

8. He recommended deleting the term ‘table-side manner’ in section 1399.434(c)(4).

BOARD RESPONSE: Agreed and recommendation was accepted.

9. He recommended moving section 1399.434(d) to be ‘12’ under section 1399.434(c), as he felt it really should be in the clinical medicine section.

BOARD RESPONSE: As the Board has discussed previously in the FSR, Mr. Haines was a member of the Competencies Task Force, which developed the proposed curriculum regulations and if it was appropriate to move categories and hours around it should have occurred when the Task Force was developing the curriculum breakdown. The Board rejected this recommendation.

10. Dr. Haines presented two other recommendations moving specific content to different categories.

BOARD RESPONSE: The Board rejected these recommendations, as they are outside of the 15-day proposed modified language, in addition to the reason defined above under No. 9 regarding the Competencies Task Force.

COMMENTS RECEIVED DURING THE PERIOD THE SECOND MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC FROM MARCH 9, 2004 TO MARCH 24, 2004 ON SECTION 1399.434.

The second modified text was made available to the public from March 9, 2004, through March 24, 2004. The Board did not receive any comments on the modified text.

CONSIDERATION OF ALTERNATIVES

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.